

To: Delancey, George J LRL[George.J.Delancey@usace.army.mil]
From: Schaller, Andrea
Sent: Wed 11/16/2016 8:37:08 PM
Subject: Fw: 7 hills permit
[Peabody Seven Hills NESA \(7\) \(1\).pdf](#)
[ATT00001.htm](#)

From: Swenson, Peter
Sent: Wednesday, November 16, 2016 2:35 PM
To: Schaller, Andrea; Melgin, Wendy
Subject: Fwd: 7 hills permit

FYI

Sent from my iPhone

Begin forwarded message:

From: "eric fry" <ericfryllc@yahoo.com>
To: "Swenson, Peter" <swenson.peter@epa.gov>
Cc: "Bryce West" <bwest@peabodyenergy.com>, "Ken M. Rogers" <kr Rogers@peabodyenergy.com>
Subject: 7 hills permit

Peter

I am not sure if you meant you would meet with the ACOE in 2-3 weeks or you hoped to meet with us in 2-3 weeks.

I have attached a NESA analysis of the site and reclamation plan. I am not sure if you are familiar with NESA analysis. It is used everyday by DOI, F&W, and the states in NRD/CERCLA cases. No doubt some in EPA are very familiar with it and the ACOE has also used it to develop mitigation ratios for new projects.

I am sure that you recall our repeated concern about the lack of protocol used in determining compensatory mitigation for coal projects in Indiana. This lack of regulatory certainty is a huge issue for capital intensive industries like mining. We need to have a good idea of requirements without waiting 5 years and spending large amounts of capital. We began to search for an idea on our own because we did not feel that progress was otherwise being made.

NESA analysis using HEA looked as though it might be suitable.

It is restoration based compensation.
It has been repeatedly accepted by the courts.
It is used by the federal government and states on a daily basis.
Its involves a system of credits and debits based on the environmental services of habitats as determined by scientific publications, precedents, and BPJ.
It includes a social discount rate designed to account for temporal loss.

ENVIRON conducted the analysis for 7 Hills. ENVIRON conducts and negotiates a large number of NESA analysis making them a excellent choice to do the analysis in a manner that would be accepted by federal and state government.

The conclusion of the ENVIRON analysis finds that the proposed onsite mitigation should be sufficient to compensate for the loss caused by mining. The analysis finds that in 50 years environmental services will double as a result of the enhancements proposed and nearly triple in perpetuity. That sounds like a good investment.

I am sure that some folks at regulatory agencies will have a problem with the conclusion of this study based on the amount of past compensatory mitigation they have been extracting from the coal industry. The difference is the quantification using accepted methods. (At this time Peabody still supports the proposal of offsite mitigation even though the analysis does not justify it.)

In addition to the NESA analysis it has become apparent that there have been some misconceptions about the site by regulators. In a recent conversation the ACOE was not aware that the site wetlands have been previously farmed (at least 80 %) and that there is nothing rare or unique to be considered. We have clear photographic evidence and professional analysis to confirm these facts. ~500 acres of wetlands seems large but when viewed in context it is a tiny percentage of total wetlands in the watershed.

In conclusion, we look forward to meeting with you to discuss these and other issues. Please be specific with any criticisms of the NESA analysis. We can have ENVIRON answer questions on the NESA analysis by phone at either our proposed meeting or at separate time.

Thanks
Eric